

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**Complaint on Sunday
and Holiday Collections**

Docket No. C2001-1

**DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORIES DFC/USPS-19-21**

June 23, 2001

I. INTRODUCTION

On May 25, 2001, I filed interrogatory DFC/USPS-19.¹ Interrogatory DFC/USPS-19 reads as follows:

Please provide the following information, in files in Microsoft Excel or similar format, from the Collection Box Management System database for every collection box in the United States that is in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

On May 29, 2001, I filed interrogatories DFC/USPS-20-21,² which inquired into functions of the Collection Box Management System (CBMS). DFC/USPS-20 states:

Please provide an operating manual and other documents that explain the operation of, functions of, and data stored by the Collection Box Management System database.

Interrogatory DFC/USPS-21 states:

¹ Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-19), filed May 25, 2001.

² Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-20-21), filed May 29, 2001.

- a. Please confirm that the Collection Box Management System database prints out a history report or similar report after a carrier or collector's scanner device is uploaded into a computer to show, for each collection box on a collection route, the location ID number of each collection box, the location of each collection box, the type of each collection box, the posted collection time or times of each collection box, the time that the collector scanned the bar code affixed inside each collection box, and a comment such as "late" or "missed." If you confirm, please provide a sample printout of this report, and please identify all the information or messages that this report may display. If you do not confirm, please explain fully, also identifying any parts of this interrogatory that you do confirm.
- b. Please explain where the hard-copy reports described in (a) are retained and for how long.
- c. Please explain where the electronic version of the data described in (a) resides and the length of time for which these data are retained.
- d. Please identify whether the electronic version of the data described in (a) is stored centrally at a headquarters or nationwide level or at a district or area level only.
- e. Please describe any reports that the Postal Service has produced at the district, area, or headquarters level based on an analysis of the data described in (a).

On June 4, 2001, the Postal Service filed an objection to these interrogatories.³ The Postal Service asserted that the interrogatories are irrelevant to this proceeding. Objection at 3–5. For interrogatory DFC/USPS-19, the Postal Service also asserted that the information is "not appropriate for public disclosure," privileged, and unduly burdensome to produce. Objection at 2, 4. For interrogatory DFC/USPS-20, the Postal Service also asserted that the interrogatory "may" request documents that "would not be publicly disclosed under good business practices, and therefore are commercially sensitive." Objection at 4. For DFC/USPS-21(e), the Postal Service objects on the grounds of undue burden (for part (e) only).

While this motion normally would have been due by June 18, 2001, on June 15, 2001, I served a motion for an extension to June 26, 2001, to file this motion.⁴

³ Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19–21, filed June 4, 2001 ("Objection").

⁴ Douglas F. Carlson Motion for Extension of Time to Respond to Postal Service Objections (filed June 19, 2001).

The Postal Service's objections are entirely without merit. The information clearly is relevant to the issues in this proceeding, and the objections have no basis in law or fact.

II. THE INTERROGATORIES ARE RELEVANT TO THIS PROCEEDING AND DO NOT IMPOSE AN UNDUE BURDEN ON THE POSTAL SERVICE.

A. THE PRESIDING OFFICER SHOULD AFFORD ME REASONABLE AND SUFFICIENT LATITUDE IN DISCOVERY SINCE THE POSTAL SERVICE CONTROLS MOST OF THE INFORMATION RELEVANT TO THE CASE THAT I MUST DEVELOP.

In this complaint, I have alleged that current service levels on holidays and eves of holidays may not be adequate within the meaning of 39 U.S.C. § 3661(a).⁵ As an individual postal customer, I face a substantial burden in proving that current service levels on holidays and eves of holidays are not adequate, particularly since the Postal Service controls most of the knowledge and information concerning both historical customer mailing patterns as well as collection and processing practices on holidays and eves of holidays. My resources for proving the inadequacy of current service levels through independently developed evidence, such as customer surveys, are limited. Nonetheless, I intend to develop testimony describing problems with service levels on holidays and eves of holidays. The presiding officer should afford me reasonable and sufficient latitude to prove that current holiday service levels are not adequate by directing the Postal Service to respond to interrogatories reasonably calculated to lead to the discovery of admissible evidence.

B. POSTAL SERVICE COLLECTION ACTIVITIES ON EVES OF HOLIDAYS ARE RELEVANT TO THIS PROCEEDING.

In objecting to these interrogatories, the Postal Service casts a broad relevance objection. On the first page, the Postal Service states that it will object to any interrogatories "that lack a clear and direct nexus to *holiday* collection and mail processing matters." Objection at 1. The fundamental flaw in this objection should be clear. This proceeding is exploring collections on *eves of holidays*, not solely holidays.

⁵ Douglas F. Carlson Notice of Filing of Amended Pages of Complaint at ¶¶ 20 and 34, filed March 29, 2001.

See, e.g., Order No. 1307 at 16–17 (“Order”). Eves of holidays include weekdays and Saturdays. The issue of “mail collections occurring prior to the time indicated on the collection receptacle” is specifically within the scope of this proceeding. Order at 16. The interrogatories at issue here concern weekday and Saturday collection practices as well as holiday collection practices. They are relevant to the central issues in this proceeding.

C. THE RECORD WILL BENEFIT FROM INFORMATION QUANTIFYING THE HARM THAT EARLY COLLECTIONS ON EVES OF HOLIDAYS CAUSE CUSTOMERS.

The Postal Service admitted in its response to DFC/USPS-14 that 28 Postal Service districts, each covering a large number of customers, performed final collections on Christmas Eve or New Year’s Eve in 1999 prior to the final posted collection time on collection boxes. Response to DFC/USPS-14. In 1998, 14 districts performed the same act. *Id.* In 2000, two districts performed early collections on Saturday, December 23, 2000, the day prior to Christmas Eve. *Id.* Early collections prior to the time posted on collection boxes raise a serious issue of customer deception. Moreover, as the Commission observed in Order No. 1307, “failure to accurately inform the public of a policy has the potential to rise to a failure or denial to provide a particular service.” Order No. 1307 at 17 (“Order”).

A central issue that I must address in my testimony is the harm to customers that these early collection sweeps cause. The harm is related to the *number of hours* between the actual collection time and the posted collection time for each collection box that the Postal Service collects early. Early collections always harm customers, but a six-hour differential is likely to harm more customers than a one-hour differential. In addition, the number of customers who are harmed is directly proportional to the *number of collection boxes* that are collected early. This issue has two subparts. First, if a district collects every box before the posted collection time, I need to be able to count the number of collection boxes in that district. Second, if a district collects some boxes before the posted collection time, I need to be able to count the number of boxes collected prior to the posted time. The percentage of boxes collected before the posted

collection time provides additional insight into the number of customers whom the Postal Service may have harmed. Presently, the record indicates no numbers of collection boxes affected. My testimony will be less useful to the Commission if I am unable to quantify the harm that early collections on the eves of holidays cause customers.

As I will explain in more detail shortly, these interrogatories will allow me to calculate the necessary information. In interrogatory DFC/USPS-40, I requested documents that should reveal the approximate time at which each district intended to collect boxes on Christmas Eve and New Year's Eve in 1999. DFC/USPS-19 will provide the posted weekday collection times for collection boxes in each affected district. Knowing the intended holiday-eve collection time, I will be able to quantify the number of boxes affected and the number of hours between the intended collection time and the posted collection time. If the documents produced in response to DFC/USPS-40 do not provide the necessary information, DFC/USPS-21 inquires into another method of proving my case: the history files that record the actual time that each collection box was collected, including notations such as "EARLY" that indicate that collection boxes were collected before the posted time. History reports for eves of holidays in 1999 probably are filled with this notation.

For Monday, July 3, 2000, a regular business day, the Postal Service suggested that area offices authorize performance clusters to collect boxes according to the Saturday times posted on boxes.⁶ The memo authorizing this practice stated that field offices would not be required to notify the Consumer Advocate's office of these plans. Only one office failed to follow this instruction and notified the Consumer Advocate's office anyway. This office was the Triboro District in New York. See Response to DFC/USPS-14. While this practice, on its face, raises serious questions about the effect on postal customers, I am unable to quantify the typical number of hours between a weekday collection time on a Triboro District collection box and the Saturday collection time, if any, on a Triboro District collection box. The weekday and Saturday

⁶ USPS-LR-1, Memo from John E. Potter to Managers, Operations Support (Area), June 23, 2000.

collection times that a response to DFC/USPS-19 will produce will provide the information necessary for me to make my case.

Moreover, once again, the history files rise to central importance because no district was required to inform Postal Service headquarters of its plans to collect boxes on Monday, July 3, 2000, according to a Saturday collection schedule. While I intend to identify in my testimony the flaws in this practice, I do not know whether one district or 60 districts collected their boxes according to a Saturday collection schedule. The scope of the early collections on Monday, July 3, 2000, directly affects the magnitude of the problem on a nationwide scale. DFC/USPS-21 seeks information relating to history files to obtain answers to these questions.

This discussion demonstrates the relevance of information on posted weekday and Saturday collection times. Holiday collection times are relevant as well. Postal Service policy requires field offices not to post holiday collection times unless mail will be collected and processed on every holiday. Responses to DFC/USPS-1–3. The Postal Service assures us in the objection that 99 percent of collection boxes do not show a holiday collection time. Objection at 3. However, where is the other one percent of the boxes located? Are the boxes located only in the service areas of plants that may process mail on every holiday? Analyzing the data in USPS-LR-2 on plants that process mail on holidays, I determined that five plants total may process mail on every holiday. See DFC/USPS-26 (response pending). Or are some of the holiday collection times located in cities such as Mobile, Alabama, where the mail will not, in fact, be processed on some holidays? See Response to DFC/USPS-22–23. By analyzing the locations of the one percent of collection boxes that show holiday collections and comparing this information to plant-by-plant volume and processing data, no doubt exists that I will develop relevant evidence on the accuracy of the information that the Postal Service provides to the public on holiday service levels.

Thus far, the record contains little quantitative information. The interrogatories in question will permit me to develop quantitative information, and the presiding officer should direct the Postal Service to respond to these interrogatories.

D. INTERROGATORY DFC/USPS-19 REQUESTS INFORMATION NECESSARY TO QUANTIFY THE SCOPE AND MAGNITUDE OF PROBLEMS WITH COLLECTIONS ON HOLIDAYS AND EVES OF HOLIDAYS.

While I have described, in general terms, the relevance of these interrogatories, a specific discussion will explain why the interrogatories will lead to the discovery of admissible evidence.

1. Relevance of interrogatory DFC/USPS-19.

Interrogatory DFC/USPS-19 requests the following information from the Collection Box Management System for each collection box: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times. Each data element is relevant to the issues in this proceeding:

1. **Location ID number.** The location ID number consists of 10 digits. The first five digits represent the five-digit ZIP Code area in which the box is located, while the second five digits indicate the box number. The location ID number is the only data element that I requested that identifies the post office responsible for each collection box. This information is necessary to analyze collection activities by district or post office on eves of holidays and to determine where the boxes that show holiday collections are located.

2. **Box address.** The box address provides the street address (but not the city or state) for each collection box. The box address is a means for determining whether a collection box is located at a post office (by cross-checking with known addresses of post offices), in a business area, in a residential area, or in a cluster of several boxes. Post offices play a special role in collections, as customers often visit the post office when they have important mail to deposit. Determining whether collections at post offices were performed prior to the final posted collection time will be particularly important. Collection boxes located in front of post offices are not necessarily immune to early collections, as these collection boxes in districts such as the Triboro District

often are assigned to motorized collection routes and are treated as if they were any other street collection box.

The area of a box — business or residential — is important because early collections in a business district may affect a particularly high volume of mail. Another element of the database, “area of box,” indicates business or residential, but this data element is not always reliable. In reviewing Collection Box Management System data for other cities, I have observed that the database sometimes will show that a box is in a residential area, but the area clearly is a business area. The box address will allow me to perform an independent check in areas with which I am familiar.

Moreover, to write meaningful testimony, I must be able to examine cities with which I am familiar and explain the likely consequences of early collections on those areas. Without the box address, this task will be impossible.

Finally, the only way to determine whether a box appears in a cluster of boxes is to sort data by address. A cluster of boxes indicates a normally high volume of mail, thus signalling the need for late-afternoon collections and the increased danger of harm to customers when the Postal Service collects those boxes early.

3. Description of address. The description of address may provide information helpful to determining where the box is located and the volume one might expect on a holiday or the eve of a holiday. For example, if the description of the address is “Fashion Plaza Shopping Mall,” the box might develop a higher volume of mail on Christmas Eve than if the description of the address indicated that the collection box was located inside a building known to be closed on Christmas Eve.

4. Service class. The service class indicates whether the box is an Express Mail or Priority Mail box, as opposed to a regular, mixed box. I will need to be able to set Express Mail boxes aside when analyzing effects on First-Class Mail.

5. Type of box. The type of box provides additional insight into the box location. Examples of box types include mail chute (normally located in buildings, and buildings may have restricted hours of access), snorkel (drive-up), jumbo, and high-

density. If a box is designated as jumbo or high-density, customers clearly rely on that box location to deposit large quantities of mail. An early collection could affect a larger number of customers than an early collection at another box. The absence of a high-density indication is meaningless, however, as Manhattan, according to the CBMS database, has no high-density collection boxes. Thus, the type of box provides one *more relevant piece of information, but all data elements should be examined before one draws conclusions about particular collection boxes.*

6. Posted weekday collection times, posted Saturday collection times, and posted holiday collection times. These data elements have obvious relevance, as discussed previously.

In sum, DFC/USPS-19 requests Collection Box Management System data that are relevant to analyzing and quantifying central issues relating to collections on holidays and eves of major holidays.

2. DFC/USPS-19 is not unduly burdensome.

The Postal Service launches a disingenuous claim of undue burden. This claim deserves close analysis. The Postal Service asserts that the process of converting data from a mainframe computer to Excel format would be "unduly burdensome." Objection at 3. Moreover,

it would be unduly burdensome even to undertake the effort of attempting to determine the exact magnitude of the burden. The analysis would require the development of a process by which the necessary steps in a feasible conversion procedure could be identified and quantified. The Postal Service has no resources available for such an effort.

Objection at 3—4. Thus, the Postal Service would like us to believe that it has no resources available even to identify and quantify the necessary steps in a feasible conversion procedure, let alone perform it.

Exhibit 1 contains a series of correspondence with the Postal Service concerning my Freedom of Information Act (FOIA) request for Collection Box Management System data for Salem, Oregon. Initially, I requested information in hard-copy format. The

Postal Service disclosed some information and withheld other information. I filed a lawsuit in federal court to require disclosure of all the information. While the lawsuit was pending, I filed another FOIA request, requesting the same information but in electronic format. The purpose of this second FOIA request was to determine the feasibility of obtaining the information in Excel format, since the redacted information that the Postal Service provided to me previously appeared to have been downloaded into a spreadsheet.

This correspondence reveals four important facts that seriously undermine the Postal Service's credibility in asserting undue burden. First, converting the data from the mainframe computer to Excel format is possible. Second, the Postal Service knows how to convert it. Third, the Postal Service has converted the data previously. Fourth, the Postal Service required only one hour to research and format data for Salem, Oregon, in Excel 97 format, plus one minute of computer run time. While data for Salem, Oregon, represent only a subset of the data for the nation, a substantial possibility exists that setup and formatting comprised most of the one hour required to provide the data for Salem, Oregon, in Excel 97 format. Now that the formatting has been performed, it would not necessarily need to be performed again to respond to DFC/USPS-19. Moreover, converting only a subset of the data may require more programming work than simply downloading and converting all of it, as DFC/USPS-19 requests.

Contrary to the Postal Service's representations to the Commission, this conversion task does not appear to be unduly burdensome. In fact, the conversion task very well may require less than one hour of work. The process of quantifying the burden certainly is not unduly burdensome. If the Postal Service had bothered to check, it would have discovered that the conversion process was developed and performed successfully in the past at a nominal cost, and the process had already been documented in letters to me.

Lastly, modern PC's are able to process Excel files containing large numbers of records, and the Postal Service can save large files onto CD-ROM's. Thus, no

technical issues are apparent that would create an undue burden in filing the converted information with the Commission in Excel format.

The Postal Service's objection fails to comply with the specificity requirements of Rule 26(c). Therefore, the presiding officer should reject the Postal Service's claim of burden and direct the Postal Service to respond to DFC/USPS-19.

E. INTERROGATORY DFC/USPS-20 WILL IDENTIFY THE TYPES OF DATA THAT THE POSTAL SERVICE COLLECTS THAT MAY HELP TO RESOLVE ISSUES IN THIS PROCEEDING.

Interrogatory DFC/USPS-20 seeks "an operating manual and other documents that explain the operation of, functions of, and data stored by the Collection Box Management System database." For this interrogatory to be proper, the operating manual does not, itself, need to be relevant or admissible. Rather, the question is whether this interrogatory is reasonably calculated to lead to the discovery of admissible evidence.

This interrogatory is designed to discover an easier way to obtain some of the data that I need to develop my testimony. The existence of specific reports or files, which the operating manual and related documents may reveal, could expedite resolution of issues in this proceeding. As I explained previously, the Postal Service controls the information necessary for me to prove my case. Indeed, on issues relating to historical data files, I do not even know quite how to ask for the information that I need. The operating manual likely contains necessary road maps and, therefore, is reasonably calculated to lead to admissible evidence on actual collection practices.

F. INTERROGATORY DFC/USPS-21 WILL IDENTIFY DATA AND REPORTS THAT MAY RESOLVE ISSUES IN THIS PROCEEDING.

To the extent that I do know how to proceed in obtaining history files or data to demonstrate actual collection practices, the Postal Service has sought to block that path as well. Importantly, DFC/USPS-21 does not request history files; instead, it essentially asks for a road map on how to formulate an interrogatory of reasonable scope and

specificity. This interrogatory is reasonably calculated to lead to the discovery of admissible evidence, which I will request in a follow-up interrogatory.

DFC/USPS-21(e) requests that the Postal Service describe reports that it has produced at the district, area, or headquarters level based on an analysis of the history data described in DFC/USPS-21(a). Again, the Postal Service possibly routinely runs and saves reports or analyzes data in such a way that central issues in this complaint can be resolved with production of these reports or analyses. This interrogatory is reasonably calculated to lead to the production of admissible evidence.

The Postal Service objects to DFC/USPS-21(e) on the grounds of burden. If the presiding officer concurs with the Postal Service's claim of burden, the Postal Service may answer the interrogatory only as it pertains to reports produced at the headquarters level.

III. BY LAW, THE POSTAL SERVICE MUST PRODUCE THE RECORDS THAT DFC/USPS-19 AND -20 REQUEST.

The Postal Service objects to producing information in response to DFC/USPS-19 and -20 on the grounds of some sort of privilege relating to the commercial nature of the information. These objections have no merit.

The Postal Service asserts that the information that I have requested from the Collection Box Management System database is "tantamount to disclosure of the carrier's line of travel and schedule when engaged in collection activities," thus supposedly posing a security risk to employees and the mail. Objection at 2. Moreover, according to the Postal Service, disclosure of "massive amounts of information of a commercial nature" would not constitute "good business practice." *Id.* Finally, the Postal Service asserts an unspecified privilege. *Id.* at 5.

A. NEITHER THE COMMISSION'S RULES OF PRACTICE NOR EVIDENTIARY LAW PROVIDES A BASIS FOR THE POSTAL SERVICE TO DECLINE TO PRODUCE THE RECORDS THAT DFC/USPS-19 REQUESTS.

The Postal Service cited no provision of the Commission's *Rules of Practice* that supports the Postal Service's objection to disclosing these records. Moreover, the Postal Service has cited no provision of evidentiary law that would sustain the objection. Instead, the Postal Service's objection is laced with indirect references to 39 U.S.C. § 410(c)(2). While the Freedom of Information Act (FOIA) normally requires the Postal Service to disclose records that persons request under FOIA, section 410(c)(2), when read in conjunction with 5 U.S.C. § 552(b)(3), allows the Postal Service to refuse to disclose "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed."

If FOIA requires the Postal Service to produce the records that DFC/USPS-19 requests, the Postal Service cannot assert a privilege to object to disclosing the same records in response to a relevant discovery request in a Commission proceeding. Therefore, I will discuss why FOIA requires the Postal Service to disclose records containing the information that I have requested in DFC/USPS-19. Since the information clearly would need to be disclosed under FOIA, the Postal Service cannot turn around now and argue to the Commission that the information should be withheld.

Even if FOIA does not require disclosure of the records at issue here, the Commission nevertheless may direct the Postal Service to produce the information because the relevance of the information outweighs any harm to the Postal Service of providing the information.

B. INTERROGATORY DFC/USPS-19 REQUESTS RECORDS THAT THE FREEDOM OF INFORMATION ACT WOULD REQUIRE THE POSTAL SERVICE TO PRODUCE.

1. The information already is in the public domain.

The first observation is fundamental. Every piece of information that I requested in DFC/USPS-19 is posted on collection boxes, available by calling 1-800-ASK-USPS, or discernible from visual examination of collection boxes. Specifically, the location ID number, box address, and posted weekday, Saturday, and holiday collection times are

posted on every collection box in full public view. This information also is available from 1-800-ASK-USPS, as is the description of address. The service class is discernible from visual examination of a collection box, as Express Mail and Priority Mail boxes are clearly labelled. These data elements also are available from 1-800-ASK-USPS. The area of the box is discernible from visual examination of a box as well. The type of box (jumbo, drive-up, mail chute, high-density) is discernible from visual examination of boxes, and the Postal Service provides this information to callers at 1-800-ASK-USPS.

In short, every piece of information that the Postal Service seeks to withhold is available to the public. Common sense confirms that a Postal Service position to withhold information that already is public is seriously flawed.

2. The distinction between *records* and *information* is crucial.

FOIA applies to *records*, not *information*. See, e.g., 5 U.S.C. § 552(a)(3). Thus, persons may request records under FOIA, not information. The records may contain desired information, but the statute applies only to records. Agencies may withhold records only if a statutory exemption applies. See 5 U.S.C. § 552(b). Thus, the Postal Service can withhold records from the Collection Box Management System database only if a statutory exemption applies.

Section 410(c)(2) allows the Postal Service to refuse to disclose "*information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed*" [emphasis added]. This statute exists to prevent *competitive harm* to the Postal Service resulting from the disclosure of commercial information. The statute's focus properly is on information. Imprudent disclosure of commercial *information* could harm the Postal Service in the competitive marketplace, and the statute protects the Postal Service from the need to disclose commercial information that, under good business practice, would not be publicly disclosed.

Every morsel of *information* that DFC/USPS-19 seeks *has already been disclosed*. The information is available to members of the public. All they need to do is to view collection boxes or call 1-800-ASK-USPS.

Section 410(c)(2) can apply only if the Postal Service can satisfy *both* conditions: (1) the information is commercial in nature; *and* (2) the information would not, under good business practice, be publicly disclosed. Again, section 410(c)(2) focuses on the information, not records that contain information. If either prong fails, section 410(c)(2) cannot apply. If section 410(c)(2) cannot apply, no FOIA exemption will apply to permit the Postal Service to withhold records containing the CBMS information that DFC/USPS-19 requests.⁷

The posted collection times, box address, description of address, location ID numbers, service class, and type of box arguably are not commercial information. They are primarily operational information. If this information is not commercial information, section 410(c)(2) will not apply.

I am willing to accept that posted collection times are commercial information for the limited purpose of proving the absurdity of the Postal Service's suggestion that section 410(c)(2) would allow the Postal Service to withhold the CBMS records that DFC/USPS-19 requests. One could argue that the posted collection times are commercial information because posted collection times are a basis on which the Postal Service can compete with private delivery companies. (This discussion sets aside the fact that posted collection times affect primarily First-Class Mail, over which the Postal Service has a monopoly.) If the Postal Service offers later collection times than a competitor company, the Postal Service can gain a competitive advantage in the delivery marketplace.

To the extent that posted collection times are commercial information, they derive their commercial value *from the fact that they are disclosed to the public*. If the public did not know the collection time of a collection box, the collection time would have no competitive or commercial value. Thus, posted collection times could trigger the first prong of section 410(c)(2) only by the very fact that they are public information.

⁷ On one occasion, in denying my administrative appeal, the Postal Service asserted that the CBMS data were "related solely to the internal personnel rules and practices of an agency." See 5 U.S.C. § 552(b)(2). A plain reading of the statute, as well as a review of the case law, will confirm that this position is frivolous.

Nonetheless, all the information that DFC/USPS-19 requests fails the second prong of section 410(c)(2): commercial information can be withheld only if, under good business practice, it would not be publicly disclosed. Logically, no information can qualify under section 410(c)(2) if the information *already has been publicly disclosed*. All the information that DFC/USPS-19 requests has been publicly disclosed, so section 410(c)(2) cannot apply.

No need exists to reach the test of whether this information would be disclosed under good business practice. Nonetheless, under this test, this information *would* be publicly disclosed as well.⁸

Previously, I highlighted the distinction between records and information. FOIA allows a person to request records. DFC/USPS-19 requests CBMS records. The Postal Service could withhold these records only if FOIA provided an exemption. In its objection, the Postal Service alludes to its favorite exemption, section 410(c)(2). However, section 410(c)(2), in conjunction with 5 U.S.C. § 552(b)(3), allows the Postal Service to withhold *records* otherwise required under FOIA to be disclosed if the records would disclose *information* of a commercial nature that, under good business practice, would not be publicly disclosed. Section 410(c)(2), the only possible exemption, applies to information, not records. DFC/USPS-19 requests *records*. The Postal Service can

⁸ The term "good business practice" is not defined in a statute. However, one court has provided guidance. See *National Western Life Insurance Co. v. United States Postal Service*, 512 F. Supp. 454 (N.D. Texas 1980). In *National Western Life*, the court determined that

"[g]ood business practice" is readily ascertainable by looking to the commercial world, management techniques, and business law, as well as to the standards of practice adhered to by large corporations.

Id. at 459.

If we accept this guideline, we would look to the practices of delivery companies in the commercial world who operate collection boxes for customers to deposit items for pickup. Two large corporations, Federal Express and United Parcel Service, provide locations and collection times for their collection boxes on their Web sites. At www.fedex.com/us/dropoff and www.ups.com/using/services/locate/locate.html, a customer can provide a five-digit ZIP Code and learn the location and collection time of every collection box in that ZIP Code. The Web sites even provide a map showing the location of each box. Customers also can obtain collection information by calling each company's toll-free telephone number.

Information from the CBMS database would not be withheld under good business practice as defined by the district court. In fact, under good business practice, a delivery company would and should disclose this information as a convenience to customers.

withhold the records only if the records contain commercial information that, under good business practice, would not be publicly disclosed. As I explained previously, all the information that these records contain has already been publicly disclosed. Section 410(c)(2) cannot possibly apply to permit the Postal Service to withhold the records that DFC/USPS-19 requests. Moreover, some or all of the information is not commercial in nature. Therefore, once again, section 410(c)(2) cannot apply.

3. The Postal Service's focus on aggregated information is misleading and irrelevant.

The Postal Service suggests that DFC/USPS-19 is flawed because it requests aggregated information. Objection at 2. In the Postal Service's eyes, a difference exists between disclosing information for one city versus the entire country. *Id.* Although I will address the merits of this argument momentarily, the merits are rather irrelevant because I have already demonstrated that no FOIA exemption applies to any records containing information that already is available to the public.

Records containing aggregated information for every collection box in the country can be exempt from mandatory disclosure under FOIA only if a statutory exemption exists to excuse mandatory disclosure. The one exemption that the Postal Service can cite, section 410(c)(2), focuses on the *information* that those *records* contain. As I have explained, every piece of information contained in the records that DFC/USPS-19 requests has already been publicly disclosed or made available for public disclosure in one way or another. Moreover, some or all of the information is not commercial in nature. None of the information contained in the CBMS records, aggregated or not, can meet the test of section 410(c)(2), which permits the Postal Service to withhold commercial information that, under good business practice, would not be publicly disclosed. Therefore, whether disclosing aggregated CBMS records is a good idea or not is irrelevant because no statutory exemption applies to exempt these records from mandatory disclosure.

The Postal Service would like to focus the inquiry on whether, under good business practice, the Postal Service should disclose the aggregated records versus the

individual box records. This approach twists the statutory scheme, however, because the statute does not exempt *records* that would not be disclosed under good business practice. The section 410(c)(2) exemption applies only to *information* contained in records. The information that the records contain has already been disclosed. Therefore, the information, even if it is commercial, does not meet the test of section 410(c)(2). Besides, even if the Postal Service could mislead a court into focusing on a possible difference between disclosing aggregated information versus individual box records, the Postal Service probably would still lose the case because good business practice dictates that collection-box information *should* be disclosed to the public. See footnote 8 (page 16, *supra*).

4. The data that DFC/USPS-19 requests provide *less* information about employees' line of travel than visual examination of collection boxes does.

The Postal Service suggests that disclosing CBMS database information would pose a security risk to employees and the mail. Objection at 2. This claim dissolves under closer scrutiny.

CBMS database information provides no more information about employees' line of travel than the information that is posted on collection boxes and that the Postal Service provides at 1-800-ASK-USPS. The database provides less information than one could observe from collection boxes themselves.

The Postal Service would like the Commission to think that listings of collection-box addresses sorted by address would reveal the line of travel. Several problems with this theory exist. First, since many cities have one-way streets, a listing sorted by box address might be very misleading. A person relying solely on CBMS data might conclude that the box at 350 7th Avenue is collected before the boxes at 375 7th Avenue and 390 7th Avenue. However, if the numbers on 7th Avenue increase in the northbound direction but 7th Avenue is one-way southbound, CBMS records would lead a person to expect the collection employee to drive against the flow of traffic. Second, various street configurations, traffic patterns, pedestrian malls, and other traffic diverters may cause the Postal Service not to collect boxes in street-number order. Third, CBMS

records sorted by box address would not explain the collector's progression from street to street. Even if CBMS records led a person to believe that the box at 125 Elm Street would be collected before the box at 150 Elm Street, does the collector go to Pine Street next, or does he go to Maple Street instead?

In a denial of an administrative appeal under FOIA, the Postal Service suggested that location ID numbers would reveal collection employees' line of travel. This suggestion collapses under closer examination. In many cities, location ID numbers appear to be assigned with no particular logic. Two boxes located next to each other often have non-consecutive location ID numbers. Many collection boxes are not collected according to the order of the location ID numbers.

In Manhattan and other locations, location ID numbers tend to increase with street numbers, although exceptions exist there as well. Street numbers and location ID numbers on north-south avenues increase as one moves north. Some avenues, however, are one-way southbound. Analysis of CBMS data would suggest that the boxes are collected from south to north, but clearly they are collected from north to south in the direction of the flow of traffic. Thus, once again, real-world traffic flows and physical street layouts render location ID numbers of little value.

Practically speaking, using location ID numbers to indicate line of travel would be *an administrative nightmare*. Every time the Postal Service wanted to add a collection box, location ID numbers would need to be reassigned, perhaps for the entire city if the new box was at the beginning of a collection route. Assigning a new location ID number to each collection box, and then relabelling each collection box, would be impractical.

Another problem exists with drawing conclusions about line of travel from location ID numbers. Even if location ID numbers were assigned in the exact order in which collection employees travelled, the CBMS data would identify the line of travel only for the first set of boxes on the first collection route. Since the Postal Service usually assigns more than one employee to collect boxes in a five-digit ZIP Code area, at some point the first route must end and the second route must begin. Location ID numbers provide no insight into where one route ends and another route begins.

Therefore, a given collection box could be the 20th box on one route, the 3rd box on another route, the 12th box on yet another route, and so on. Location ID numbers consist of the five-digit ZIP Code in which the collection box is located, followed by five digits that identify the box number. They might be consecutive for an entire five-digit ZIP Code; but they are never reset to zero for each collection route within a five-digit ZIP Code. Practically speaking, location ID numbers, even if they represented the exact line of travel, would provide no more information than the locations of the first few boxes on the first collection route — hardly much of an insight into anything.

If location ID numbers pose as much of a risk as the Postal Service has been known to assert, one must seriously question why the Postal Service posts location ID numbers on every collection box, in full public view. The reality, of course, is that public knowledge of location ID numbers poses no risk to the security of postal employees or the mail.

To the extent that CBMS records would provide a person any insight into the collectors' line of travel, the records would provide no further insight than a visit to the collection boxes themselves would. In fact, a visit to the collection boxes would reveal much more information about collection-box locations, and collection employees' line of travel, than perusal of CBMS data ever would. Presumably a person contemplating a crime would want — and need — to visit the collection boxes, anyway, both to execute the crime and, beforehand, to confirm that the box he targeted after perusing CBMS data for several hours was not located, for example, in front of a police station.

5. The Postal Service's arguments against disclosing Collection Box Management System data are disingenuous, as they were devised after the fact to prevent public scrutiny of postal operations.

The Postal Service's arguments against disclosing public information contained in the CBMS database should strike a reasonable person as odd. Indeed, they are fanciful arguments that the Postal Service concocted in 1999 to try to justify withholding CBMS data from FOIA requesters. The Postal Service devised these arguments after I used CBMS records that I obtained under FOIA to demonstrate to the district manager

of the Triboro District that a substantial percentage of the collection boxes located in Flushing, New York, had collection times far earlier in the day than Chapter 3 of the *Postal Operations Manual* allows. I requested that she correct these problems. Within a month, the Postal Service shifted gears and announced that releasing collection-box information would pose a security risk. In reality, the Postal Service's true motivation, with regard to both Flushing, New York, and this complaint on holiday collections, is to prevent public scrutiny of postal operations.

6. The Postal Service's position conflicts with the intent of Congress in enacting FOIA.

Ironically, according to the D.C. Circuit, FOIA was "designed in part to 'provide the means by which the people of this country can become informed and thus be able to scrutinize the activities and operation of their Government.'" *Getman v. NLRB*, 450 F.2d 670, 680 (D.C. Cir 1971) (quoting Senator Dirksen). The Supreme Court held that the clear congressional objective of FOIA is to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny[.]" *Department of Air Force v. Rose*, 96 S.Ct. 1592, 425 U.S. at 361 (1976). Thus, even if any of my arguments in favor of disclosing the information that I have requested in DFC/USPS-19 did not, by themselves, convince a court that FOIA requires the Postal Service to disclose the records, the clear purpose of FOIA would tip the balance in favor of public scrutiny of government activities and against arguments developed after the fact to defend an ill-conceived decision to withhold this information from FOIA requesters.

One can hardly imagine fashioning a FOIA request, or a FOIA dispute, for information that is as public as the information that I am requesting. If FOIA does not require the Postal Service to disclose records containing information that is posted in public view on collection boxes nationwide, the letter and spirit of FOIA would be rendered meaningless, since FOIA is meant to pierce the veil of secrecy and extend to records containing information that the public does not already know.

C. INTERROGATORY DFC/USPS-20 REQUESTS INFORMATION THAT IS NOT SUBJECT TO ANY PRIVILEGE.

DFC/USPS-20 requests "an operating manual and other documents that explain the operation of, functions of, and data stored by the Collection Box Management System database." The Postal Service asserts that some "higher level documents" regarding the operation of the system "may" exist that are commercially sensitive. Objection at 4. As explained previously, the operating manual may explain straightforward ways to obtain history information that is relevant to issues in this case.

The Postal Service should be required to provide the documents that are not commercially sensitive, then explain specifically why other documents should not be provided. Alternatively, the Postal Service should move to provide sensitive documents under protective conditions. Unfortunately, this objection appears to be based on pure speculation about the operating manual for the CBMS database, as the Postal Service opted not to burden itself to conduct even a preliminary investigation into the documents that DFC/USPS-20 requests to determine whether legitimate grounds for objection exist.

D. STATUS OF LITIGATION IN FEDERAL COURT.

In its objection, the Postal Service notes that I filed a lawsuit in federal court to require the Postal Service to disclose records that I had requested containing CBMS data for Salem, Oregon. Objection at 2. Given the obvious relevance of a court decision, I will provide an update on the status of this case.

The Postal Service released the records for Salem, Oregon, after 10 months of litigation, apparently to render my case moot and prevent me from obtaining a judgment against the Postal Service. I responded by moving to amend my complaint to request a declaratory judgment holding that no FOIA exemptions apply to permit the Postal Service to withhold these records. Over the Postal Service's opposition, the court granted my motion to amend my complaint. In an upcoming case-management conference on June 28, 2001, with the district judge assigned to the case, I expect that we will set a deadline for filing motions for summary judgment.

IV. CONCLUSION

Interrogatories DFC/USPS-19-21 request information that is relevant to the issues in this proceeding, not unduly burdensome to produce, and not subject to any privileges or statutory exemptions from disclosure. Therefore, the presiding officer should direct the Postal Service to produce the information that these interrogatories request.

Respectfully submitted,



Dated: June 23, 2001

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

June 23, 2001
Santa Cruz, California

EXHIBIT 1

PO Box 12574
Berkeley CA 94712-3574
September 2, 2000

Manager
Service Management Policies and Programs
United States Postal Service
475 L'Enfant Plz SW Rm 6801
Washington DC 20260-1603

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, I request records from the Collection Management System that show, for every collection box that is under the jurisdiction of the post office in Salem, Oregon, the box address and the service class. (By "box address" and "service class," I intend the meaning of these terms as the terms are used in the Collection Management System database.)

Pursuant to 5 U.S.C. § 552(a)(3)(B), I request this information in a Microsoft Excel file or another file format that Microsoft Excel 97 can read. If and only if the records cannot be readily reproduced in the format that I have requested, please provide a hard copy instead. If provision of the records in an electronic format would cause me to incur charges for search time that I otherwise would not incur, I would consider the records not to be "readily reproducible" in an electronic format, and I would request that the records be provided as a hard copy.

At this time, I am not willing to pay any fees for the provision of this information. According to 39 C.F.R. § 265.9(g)(2)(i), fees shall not be charged for the first 100 pages of duplication and the first two hours of search time. If fees will need to be charged, please notify me in advance.

Consistent with 5 U.S.C. § 552(a)(6) and 39 C.F.R. § 265.7(b), I look forward to receiving the information that I have requested within 20 working days of the date on which you receive this request.

Please contact me by mail or by telephone at (510) 597-9995 if you need to clarify any part of my request.

Thank you for your time.

Sincerely,



Douglas F. Carlson



October 27, 2000

Mr. Douglas F. Carlson
Post Office Box 12574
Berkeley, California 94712-3574

Dear Mr. Carlson:

This is in response to your letter dated September 2, whereby you requested collection box address and service class information for every collection box under the jurisdiction of Salem, Oregon. We apologize for the delay in our response.

This office has already provided you with the requested information in hardcopy format on December 16, 1999 and on July 27, 2000. Based on your previous requests and the time involved for us to research, retrieve and prepare such, I must advise you that you have already exhausted the first two hours of free search time allotted for FOIA requests.

It is estimated that it will take approximately one hour for us to research and format the information in Excel 97. The Postal Service charges \$70.00 per hour for programming services and \$22.50 per one minute of run time. Therefore, the total fee for this service is \$92.50.

Please advise this office if you are willing to pay the fee.

Sincerely,


Gary W. Litwinowicz
Manager
Service Management Policies and Programs

PO Box 12574
Berkeley CA 94712-3574
October 31, 2000

Mr. Gary W. Litwinowicz
Manager
Service Management Policies and Programs
United States Postal Service
475 L'Enfant Plz SW Rm 6801
Washington DC 20260-1603

Dear Mr. Litwinowicz:

Thank you for your letter dated October 27, 2000, concerning my September 2, 2000, Freedom of Information Act request.

In your letter, you stated that I have exhausted the first two hours of free search time allotted for FOIA requests based on my "previous requests." Please identify my previous FOIA requests whose search time has exhausted the two free hours of search time to which I normally would be entitled for my September 2, 2000, FOIA request. In addition, you noted that you provided this information to me in hard-copy format on December 16, 1999, and July 27, 2000. As you may be aware, the Postal Service provided the July 27, 2000, information in response to my appeal to the partial denial on December 16, 1999, of my initial FOIA request. Please clarify whether you are charging search time to prepare the information that you provided on July 27, 2000, against the two free hours to which I was entitled for my September 2, 2000, FOIA request.

Thank you for your assistance.

Sincerely,



Douglas F. Carlson



December 5, 2000

Mr. Douglas F. Carlson
P.O. Box 12574
Berkeley, California 94712-3574

Dear Mr. Carlson:

This is in response to your letter dated October 31 concerning free search time for FOIA requests in regard to information for Salem, Oregon.

It is our position that you have exhausted the first two hours of free search time on your previous requests. We are treating all requests for information on Salem, Oregon as an aggregate request. In the past, we provided you with information for every collection box; 5-digit ZIP Code; service class; description of address; and area of box within the jurisdiction of Salem, Oregon. In order to make this information available; a computer programmer created a file on the mainframe system. The information was then downloaded to a personal computer via the file transfer protocol (FTP) process and converted to a text file.

The computer programmer followed these steps to create the file sent to you on December 16, 1999. These steps were later modified and followed as we sent you additional information in the report dated July 27, 2000. These efforts took approximately two hours search time.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Litwinowicz", with a long, sweeping horizontal line extending to the right.

Gary W. Litwinowicz
Manager
Service Management Policies and Programs